

(1996) 07 MAD CK 0131

In the Madras High Court

Case No : H.C. Petition No. 59 of 1996

Rajeswari

APPELLANT

Vs

District Magistrate, District Collector of Salem and another

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Criminal Procedure Code, 1973 (CrPC) — Section 161(3)

Citation : (1997) CriLJ 439 : (1998) 2 LW(Cri) 751

Hon'ble Judges : Y. Venkatachalam, J; Janarthanam, J

Bench : Division Bench

Advocate : V. Gopinath, for M/s K. Selvarangan and L. Mahendran, for the Appellant; P. Venkatasubramanian, Assistant Public Prosecutor, for the Respondent

Judgement

Janarthanam, J.—One Rajeswari (petitioner) is the wife of the detenu Palanisamy. The detenu, it is said is a Boot legger". Apart from the ground case, the occurrence relating to which is said to have happened on 20-11-1995, he had come to adverse notice in four other cases.

2. The District Magistrate and District Collector, Salem (1st Respondent) claimed upon the detenu, the impugned order of detention under the relevant provisions of Tamil Nadu Act 14 of 1982 in his proceedings C.M.P. No. 35/B.L.A./95(C2) dated 2-11-1995 with a view to preventing him from indulging in any activity prejudicial to the maintenance of public order and public health.

3. Mr. V. Gopinath, learned senior counsel, representing M/s. K. Selvarangan, and L. Mahendran appearing for the petitioner would press into service the following points for consideration :-

(1) Representation dated 23-12-1995 had not at all been considered and disposed of without any unreasonable delay and such a factor greatly affected the rights of representation inhering in favour of the detenu under Article 22(5)

of the Constitution of India ?

(2) The first respondent-detaining authority took into consideration extraneous material in penning down the impugned order of detention, which is getting reflected in paragraph 3 of the grounds of detention and such a factor would indicate the non-application of mind on his part in deriving the subjective satisfaction before ever he penned down the impugned order of detention.

(3) Non-furnishing of a copy of the remand order, wherein the detenu is alleged to have stated that he had been taken into custody much earlier to the ground case, and tortured, greatly affected the right of representation before the Advisory Board inhering in his favour under Article 22(5) of the Constitution of India and this factor if added to other factors vitiates the impugned order of the detention ?

4. Mr. P. Venkatasubramanian, learned Additional Public Prosecutor (In charge) would, however repeal such submissions and produce the relevant file for perusal and consideration of this Court.

5. Point 1 :- From a perusal of the file, we are able to discern that the representation dated 23-12-1995 had been received by the second respondent Government on 26-12-1995 and on the same day remarks had been called for from the first respondent Detaining Authority. The Communication calling for remarks had, in fact, been received by the first respondent-Detaining authority on 26-12-1995 itself and he in turn, called for remarks from the sponsoring Authority the next day i.e., to say on 27-12-1995. The remarks so called for had been received by him on 29-12-1995, 30-12-1995, 31-12-1995 and 1-1-1996 were holidays is being Saturday, Sunday and New Year Day. On 2-1-1996

post. The remarks so sent has been received by the second respondent-Government on 4-1-1996, on 5-1-1996, the file had been forwarded to the concerned section. After processing the file on 6-1-1996, the same had been initially circulated to under Secretary and subsequently to Joint Secretary. On 7-1-1996, the file had been circulated to the Minister for Law and he, in turn, after taking into consideration the relevant materials in the file, passed an order on 8-1-1996, rejecting the same and the rejection order had been subsequently communicated to the detenu.

6. It is thus crystal clear from the chronology of events that took place from the date of receipt of the representation at the secretariat of the 2nd respondent-Government, which event happened on 26-12-1995, the file had been processed at various levels of the 2nd respondent-Government, without any unreasonable delay and in such state of affairs to say that the representation of the detenu dated 3-12-1995 had not at all been disposed of with all promptitudo and expedition cannot at all be countenanced. This Point, as such, is liable to be rejected and the same is, accordingly, rejected.

7. Point 2 :- For mounting an attack of non-application of mind on the part of the

first respondent Detaining Authority in taking into consideration irrelevant and extraneous materials for penning down the impugned order of detention certain averments in paragraph 3 of the grounds of detention had been relied upon those averments are to the following effect :-

"The Inspector of Police, Namagiripet has examined Dr. Syed Satrudeen, M.B.B.S., M.D., Medical officer, who has opined that Atropine is a poisonous substance and 3.5% mg. or more of atropine mixed with arrack, if consumed would cause giddiness, dimness in eye-sight burning sensation in mouth, throat, and stomach besides unconsciousness. Also the Doctor opined that such symptoms arose to Thiru Periasamy would occur due to the consumption of arrack mixed with said poisonous substance and consumption of excess quantity of such arrack will be dangerous to human life depending upon the constitution of the body of the individual".

8. To test the tenability or otherwise of the submission we may refer to the Chemical Examiner's opinion, which is available at page 27 of the booklet of documents and also Section 161(3) Cr.P.C. statement of Dr. Syed Satrudeen, M.B.B.S., M.D., which is available at pane 28 of the booklet of document furnished to the detenu. The chemical Examiner's report, as available at pate 27, fixes the quantum of Atropine present in the illicit arrack sent for chemical examination. The report reveals that contraband arrack when examined, contained 4.6 mg. of Atropine. From a perusal of Section 161(3) Cr.P.C. statement of Dr. Syed Satrudeen, M.B.B.S., M.D., which is available at page 28, were able to discern that the said Doctor had been questioned by the sponsoring Authority as respects the effects to be produced by the consumption of arrack, containing 3.5% miligram of Atropine like a victim in the case on hand viz., Periasami and to the query so posed by the sponsoring Authority, the said Doctor had expressed his opinion that such consumption of illicit arrack containing such quantity of Atropine would cause giddiness, dimness in eye sight, burning sensation in mouth, throat and stomach, besides, unconsciousness. He would further state that symptoms arose to the victim Periasamy would occur due to consumption of arrack mixed with the said poisonous substance and consumption of excess quantity of such arrack will be dangerous to human life depending upon the constitution of body of the individual. In such circumstances, it cannot at all be stated that the first respondent - Detaining Authority relied upon extraneous materials in paragraph 3 of the grounds of detention for deriving the subjective satisfaction to clamp upon the detenu the impugned order of detention. The point as such, bristles next to nothing.

9. Point 3 :- The grievance herein is that the detenu had not been furnished with a copy of the remand order notwithstanding the fact a request emanated from the detenu in his representation dated 23-12-1995 and such non-furnishing of the copy of the remand order, it is said, affected greatly his right of representation under Article 22(5) of the Constitution of India before the Advisory Board, which met on 5-1-1996. It is claimed that at the time of

remand, the detenu was stated to have made a representation to the Remanding Magistrate, that he in fact, had been taken into custody much earlier to the occurrence in the ground case and tortured and the ground case had been foisted upon him. If he had really stated such factors before the Remanding Magistrate at the time of his remand and a copy of the said order of remand containing such representation had not been furnished as requested cock sure, it is, such non-furnishing of a copy of the remand order would have greatly affected the right of representation inhering in his favour under Article 22(5) of the Constitution of India before the Advisory Board. The reason is rather obvious. The Advisory Board consists of Dignitaries in the Cadre of Hon"ble Judges, of High Courts. Further, under the scheme of the Act, the Advisory Board is entitled to sift and scan the materials as if it is an Appellate Authority to come to the conclusion as to whether there is sufficient cause for detention. If really the detenu had been taken into custody, tortured and the ground occurrence had been foisted upon him, such factors contained in such a vital document could have influenced the mind of the Advisory Board in expressing its opinion in one way or other.

10. No doubt, in the case on hand, a copy of the remand order had not been furnished to the detenu before the meeting of the Advisory Board, notwithstanding the fact, as already stated, a request emanated from the detenu in his representation dated 23-12-1995. Such a request had been rejected by the second respondent Government stating that all documents relied upon for clamping upon the detenu, the impugned order of detention had been furnished to him.

11. Having not satisfied with such are rejection, we on our part, daunted by good conscience and fairness, requested Mr. P. Venkatasubramanian, learned Additional Public Prosecutor (In charge) to get a certified copy of the remand order when the matter came up for arguments on 25-6-1996, adjourning the matter for completion of arguments today (3-7-1996). As directed, a certified copy of the remand order of the detenu in the instant case had been placed on record today (3-7-1996). From a perusal of the remand order, we are unable to find any such representations stated to have been made by the detenu before the Remanding Magistrate, as had been stated in his representation dated 23-12-1995. The sordid fact is he did not complain at the time of his remand before the Remanding Magistrate any ill treatment or as having been taken into illegal custody long before the occurrence in the ground case. The operative portion of the remand order, as we pen down here, would make matters fluidly crystal clear. The operative portion of the remand order reads as below :-

"Accused produced at 3:30 p.m. No Complaint of ill treatment by the police. Remand till 5-12-1995."

12. In such state of affairs, it goes without saying that the detenu snatched upon the non-existing ground to some how or other wriggle out the clutches of law, in the sense of somehow or other the impugned order of detention being set aside.

Such an attitude on the part of the detenu is highly reprehensible and deserves to be deprecated, inasmuch as taking of such a stand is to play a fraud upon the Court. This point as such, is liable to be rejected and the same is accordingly rejected.

13. In view of all the three points as urged for consideration, having been answered against the detenu, it goes without saying that this H.C.P. deserves to be dismissed and the same is accordingly dismissed.

14. Petition dismissed.